IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DAVID BEARD,	)	No. 57142-7-I
	)	
Appellant,	)	DIVISION ONE
	)	
v.	)	
	)	
EDWARD D. JONES & COMPANY, L.P.,	)	
	)	UNPUBLISHED
	)	
Respondent.	)	FILED: August 28, 2006
	)	
	)	

COX, J. – Arbitration is a statutory procedure that permits arbitrators to modify or correct their awards upon limited grounds.[1] One of those limited grounds is where "there was an evident miscalculation of figures … referred to in the award."[2] Here, there is no evident miscalculation of figures in the original award of the arbitrators who heard this case. Accordingly, we reverse and remand.[3]

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[1] RCW 7.04.175 (2004).

[2] Former RCW 7.04.170(1) (2004).

[3] Edward D. Jones & Company moves to strike David Beard's supplemental brief. RAP 10.8 permits filing of supplemental authority without argument. RAP 10.4 prohibits citation to unpublished opinions of this court, not those of other jurisdictions. Accordingly, we grant the motion in part and disregard all of the supplemental brief except the one page titled Table of Supplemental Authorities.

David Beard suffered significant financial losses due to the alleged mismanagement of investments placed through Edward D. Jones & Co., L.P., a national stock brokerage firm. Pursuant to his account agreement, Beard submitted a claim for arbitration to the National Association of Securities Dealers (NASD). A three member arbitration panel conducted a hearing from October 11-14, 2004. On October 22, 2004, the panel rendered an award to Beard of $85,000 in compensatory damages and attorney and expert witness fees of $130,000.

Edward Jones moved to correct the arbitration award, pointing out a typographical error in Beard's fee request. It argued that the fee multiplier applied by the panel was inappropriate and that expert witness fees were not recoverable. Beard responded, arguing, inter alia, that the arbitration panel had no jurisdiction to reconsider its award.

The panel subsequently issued an amended award, reducing the amount awarded to Beard by $28,241.58. It is unclear what part of the award was reduced, but it appears that the amended award gave Beard the amount of fees he initially requested, increased the initial expert fee award, and declined to apply the 1.5 multiplier to the amended award as it had to the original award. Beard then filed this action to confirm the first award and vacate the second award for lack of jurisdiction. Edward Jones counterclaimed, moving to vacate the first award and confirm the amended award.

The court confirmed the amended award, denying Beard's motion to

confirm the original award.

Beard appeals.

Modification of Award

Beard argues that the trial court erred in confirming the amended award. We agree.

Governing Law

Though the issues in this case involve securities, the Federal Arbitration Act (FAA) does not preempt the provisions of the Washington Arbitration Act applicable here. "It is beyond dispute that the FAA only preempts conflicting state law. State law may supplement the FAA to the extent it does not conflict with it."[4] The relevant provisions here are not in conflict with the FAA, and therefore, state law applies.

RCW 7.04.175

Beard argues that there was no evident miscalculation of figures that would justify modification of the panel's initial award. Moreover, Beard contends that Edward Jones' motion to correct the award was little more than an argument on the merits, which is not permitted under the statue. We agree with both assertions.

The governing statute provided that, upon application by a party, "the

[4] Pine Valley Productions v. S.L. Collections, 828 F. Supp. 245, 248 (1993) (citations omitted).

arbitrators may modify or correct the award upon the grounds stated in RCW 7.04.170 (1) and (3)."[5] Those grounds were:

> (1) ***Where there was an evident miscalculation of figures***, or an evident mistake in the description of any person, thing or property, referred to in the award.
>
> …
>
> (3) Where the award is imperfect in a matter of form, not affecting the merits of the controversy. The order must modify and correct the award, as to effect the intent thereof.[6]

The statutory phrase "evident miscalculation of figures," is identical to §13(a)(1) of the 1955 version of the Uniform Arbitration Act.[7] Courts that have construed this statutory phrase recognize that it must be limited to the arbitrator's obvious mathematical error in applying an intended principle or standard.[8] The narrow scope to be accorded an "evident miscalculation of figures" was underscored by the legislature's recent adoption of the revised Uniform Arbitration Act. Effective January 1, 2006, RCW 7.04.170(1)(a) replaced the phrase "evident miscalculation of figures" with "evident mathematical miscalculation".[9]

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[5] Former RCW 7.04.175 (2004).

[6] Former RCW 7.04.170 (2004).

[7] 7 U.L.A. 409 (1997).

[8] See, e.g., Dadak v. Commerce Ins. Co., 53 Mass. App. Ct. 302, 758 N.E.2d 1083 (2001); Jones v. Summit Ltd. Partnership Five, 262 Neb. 793, 635 N.W.2d 267 (2001) (an "evident miscalculation of figures" occurs when there is "a mathematical error in the arbitration award that is both obvious and unambiguous").

[9] Laws of 2005, ch. 433, § 24.

In this case, the arbitration panel made no evident mathematical error in carrying out its intended decision. Essentially, Edward Jones argues that the panel was confused by the figures Beard presented and that it committed an error of law in applying the 1.5 multiplier Beard requested to Beard's attorney fees.

The original arbitration award of October 22, 2004 read as follows:

> After considering the pleadings, testimony, and evidence presented at the hearing, the Panel decided in ***full and final resolution*** of the issues submitted for determination as follows:
>
> 1) Respondent Edward D. Jones & Co., L.P. is liable to and shall pay Claimant David Beard the sum of $85,000.00 in compensatory damages.
>
> 2) Respondent Edward D. Jones & Co., L.P. is liable to and shall pay Claimant David Beard the sum of $130,000.00 in attorney's fees and costs, including expert witness fees. The Award of attorney's fees is made pursuant to the Washington Securities Act.
>
> 3) Respondent Edward D. Jones & Co., L.P. is liable to and shall pay Claimant interest in the amount of 10% per annum on $85,000.00 from October 15, 2002 until the date that payment of this Award is made in full.
>
> 4) All other relief requested and not expressly granted is denied.[10]

In its amended award, the panel ruled that it had "ongoing jurisdiction to reconsider an award of fees and costs where the original award was based on erroneous factual information. Claimant had proffered various estimates concerning fees and costs since the evidentiary hearing regarding this matter took place on October 11-14, 2004. As Claimant has recently provided finalized

[10] Clerk's Papers at 13-14 (emphasis added).

exact amounts, the Panel has decided that it can now make a final ruling regarding fees and costs." Despite this language in the amended award, it is clear that the original award was, when issued, a final award, constituting a "full and final resolution of the issues submitted for determination." Thus, the characterization of the amended award as one done on the basis of "finalized exact amounts" is simply wrong.

Edward Jones argues that there was an evident miscalculation because "the arbitrators awarded an amount of attorney fees and expert witness fees that bore no relation to any of the numbers provided to the Arbitration Panel by Plaintiff at the hearing, via affidavit or in closing argument." However, this argument would require this court to review the evidence submitted to the arbitrators and this we cannot do.[11]

In conclusion, the statutory limitation on the finality of an arbitration award is a narrow one, and permits an arbitrator to revisit an award to correct, in this case, an evident computational error. Potential confusion on the arbitrators' part, is not such an evident miscalculation. Nor would the fact that information provided to the panel was an estimate of costs be a sufficient basis to modify an award. According the broad interpretation to "evident miscalculation of figures" urged by Edward Jones would effectively undermine the strong public policy favoring the finality of arbitration awards.[12]

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[11] Lindon Commodities, Inc. v. Bambino Bean Co., Inc., 57 Wn. App. 813, 816, 790 P.2d 228 (1990) ("The evidence before the arbitrator will not be considered.").

We conclude that the statutory exception permitting the arbitrators to amend the original award did not apply in this case. Therefore, the trial court erred in confirming the amended award and denying Beard's motion to confirm the original award.

We reverse the trial court's confirmation of the amended award and remand for confirmation of the initial award.

Cox, J.

WE CONCUR:

Schindler, ACJ

Grosse, J

[12] Davidson v. Hansen, 135 Wn.2d 112, 118, 954 P.2d 1327 (1998); Perez v. Mid-Century Ins. Co., 85 Wn. App. 760, 765, 934 P.2d 731 (1997) (recognizing a strong public policy in Washington state favoring arbitration of disputes); Clearwater v. Skyline Constr. Co., 67 Wn. App. 305, 314, 835 P.2d 257 (1992) (same). See also Munsey v. Walla Walla College, 80 Wn. App. 92, 94-95, 906 P.2d 988 (1995) (recognizing the strong public policy favoring arbitration of disputes and noting arbitration eases court congestion, provides an expeditious method of resolving disputes and is generally less expensive than litigation); accord King County v. Boeing Co., 18 Wn. App. 595, 602-03, 570 P.2d 713 (1977).